IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7098 OF 2005

Raju Soma Kandhare Applicant

versus

The State of Maharashtra Respondent

S.S.Kulkarni for applicant.

S.S.Tatkare, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th November 2005

PC :

1. Heard Shri Kulkarni in support and Shri Tatkare appearing for the respondents.

2. Relying upon a decision reported in AIR-1952-SC-54, which is followed in State of Rajasthan Vs. N.K. - accused, reported in (2000)5-SCC-30 as also two other decisions on the principles to be applied for grant of bail, Shri Kulkarni contends that in the present case it is improbable that the victim could be said to be raped by the applicant-accused. On the other hand, this is a case where the applicant cannot

be arrested for the offences punishable under sections 363, 366, 376 and 506(1) of the IPC.. The entire allegations are based upon the fact that the complainant was allegedly missing for some time and thereafter she came to the Police Station from where she was taken to the Remand Home. The statement of the prosecutrix/ victim shows that she knew the applicant. She was working near the place where the applicant was working. She accompanied the applicant voluntarily on the motor cycle in the morning and after the work was over. She further went along with him to his relations place. She stayed for him for two days there. She did not desire going back to her parents. It is not her case that she was taken away by force or that the act committed is in any way without her consent. On a plain reading of the said statement this is a case where the applicant cannot be said to be guilty of the offences as alleged.

3. Applying settled principles and refraining from expressing any opinion on the merits of the matter, all that can be said in the light of Section 114A of the Indian Evidence Act and further the Supreme Court treating the prosecutrix not an accomplice any longer but a

victim and rape being a social crime, in my view, this is not a fit case for enlargement of the applicant on bail. At this prima facie stage it is not necessary to refer the materials in details when the statutory provisions are noticed. It is, therefore, not necessary to refer the decisions cited. Application is, therefore, rejected.

(S.C.DHARMADHIKARI, J.)